IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

F.C.I. Vs. Firm: Tekchand & Ors.
S.B. CIVIL FIRST APPEAL NO.69/2006

Against judgment and decree dated 28.09.2005 passed by Addl. District Judge, Anoopgarh in Civil Original Suit No. 41/2004 – Firm Tekchand & Ors. Vs. FCI & Ors.

DATE OF JUDGMENT: 1 june, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. S.N. Trivedi for appellant.
Mr. S.L. Jain for respondent.

BY THE COURT:

Defendant Food Corporation of India & its authorities have approached this Court by filing the present appeal under Sec.96 of the CPC being aggrieved of the judgment and decree dated 28.09.2005 passed by the Addl. District Judge, Anoopgarh in Civil Original Suit No. 41/2004 decreeing the suit filed by partnership firm M/s. Tekchand and holding the plaintiff firm entitled to receive a sum of Rs.8,67,970 with simple interest @9% per annum from the date of filing suit till realization.

The suit of the plaintiff inter-alia averred that the defendant Corporation by its letter dated 24.01.2001 proposed to hire 8 godowns (plinths) with the guarantee to keep the plinths on rent initially for a period of two years and thereafter called the plaintiff firm for negotiation at Jaipur on 08.05.2001 and on acceptance of the plaintiff firm the proposal of the appellant for hiring of 8 godowns (plinths) on 29.01.2001, amended lay out plan for the plinths was provided and the plaintiff firm accordingly got constructed required 8 plinths incurring expenditure of about 20 lacs in view of the correspondence with the Regional Office of the defendant-appellant Corporation that the plinths would be hired for a minimum period of 2 years. It is stated that on completion of the plinths, same were inspected by the District Manager, FCI, Sri Ganganagar and an agreement was executed between the parties for taking on rent those plinths @ Rs.49788 per month. It is alleged that the Corporation paid the rent to plaintiff for the plinths only for the period upto 13.10.2002 but discontinued paying the rent

thereafter on baseless grounds and when the plaintiff drew attention of the defendants towards the agreement and correspondence between the parties for regularly making payment of rent till 13.04.2004, the defendant assured the plaintiff for payment but did not pay the same and handed over the premises to the plaintiff on 20.06.2004. According to the plaintiff the notice sent for payment of the rent yield no result hence by filing the suit claim for recovery of rent was made for the period from 1.11.2002 to 13.04.2004 amounting to Rs.8,67,970 with interest 12% per annum.

Replying to the case of the plaintiff that on the written assurance of defendant Food Corporation of India for two years' occupancy guarantee the plaintiff got constructed eight plinths by spending Rs.20 lacs excluding the cost of the land and same were rented out to the Food Corporation of India under lease agreement for two years from 14.04.2002 to 13.04.2004 and as such before completion of the stipulated period of two years the possession of the plinths could not be given and plaintiff

could not be deprived of agreed rent till the completion of stipulated period of lease and the lease agreement for hiring Plinths dated 12.07.2002 could not be revoked unilaterally as the Food Corporation of India was bound to abide by the terms of the lease agreement. The defendants denied the averment made in the plaint relating to taking the plinths for two years' on guarantee basis so also executing any agreement for that purpose. As regards lease agreement for hiring the godowns, the defendants took the stand that rent was payable according to clause II of the lease agreement which was executed on 12.07.2002 in between plaintiff and defendant No.3 i.e. @ 45 paise per sq.ft. per month for the actual occupation of godown. The defendants further stated that as per the directions of Senior Regional Manager, a letter was sent by the Assistant Manager(Depot), Annoopgarh on 15.11.2002 for dehiring 7 plinths out of the 8 hired plinths and to take possession of the plinths but the plaintiff refused to receive the letter and the notice for dehiring the plinths sent to the plaintiff was not replied by it. The defendants

in the written statement denying the claim of the plaintiff for Rs.8,67,970 stated that the actual rent payable amounting to Rs.1,28,296 was refused by the plaintiff and the defendants were not in possession of dehired 7 plinths after 01.11.2002. Objections were taken by the defendants that the plaintiff did not take care to carry out necessary works for proper storage of goods despite service of many notices and failed to provide facilities as per the terms of the lease. Defendants denied payment for the vacated plinths and prayed for dismissal of the suit with costs.

On the pleadings of the parties, trial Court on 25.05.2005 framed the following issues:

1. Whether defendant Corporation had taken 8 plinths from plaintiff on rent with two years' occupancy guarantee for the period from 14.04.2002 to 13.04.2004, hence the plaintiff is entitled to receive rent of 8 plinths at the agreed rate?

2. Whether the plaintiff firm is entitled to receive Rs.8,67,970 from defendants

3. Relief?

In evidence, from the side of plaintiff firm, affidavits of PW1 Tekchand and PW2 Premkumar were filed and in documentary evidence exhibited Ex.1 Registration Certificate of the firm, Ex.2 List of partners, Ex.3 Lease deed, Ex.4 Receipt of handing over the key of main gate, Ex.5 & 6 letters of defendants dated 11.12.2000 & 24.01.2001, Ex.7 telegram, Ex.8 telegram dated 09.05.2001, Ex.9 letter dated 29.05.2001, Ex.10 defendant's letter dated 29.06.2001, Ex.11 letter dated 28.07.2001, Ex.12 Report of Assistant Manager, Anoopgarh, Ex.13 defendant's letter dated 23.01.2002, Ex.14 telegram dated 13.11.2002, Ex.15 letter of defendant dated 15.11.2002, Ex.16 letter dated 27.02.2003, Ex.18 copy of notice sent to defendant and Ex.19 letter sent to the lawyer of plaintiff by the Corporation. Defendants filed affidavit of DW1 Giriraj Prasad Meena and in documentary evidence exhibited Ex.A/1 letter dated 20.06.2002, Ex.A/2 Fax dated 23.09.2002, Ex.A/3 Telegram dated 13.11.2002, Ex.A/4 letter dated 15.11.2002, Ex.A/5 letter dated 07.01.2003,

Ex.A/6 letter dated 11.06.2003 from District Manager to Sr. Regional Manager of the Corporation, Ex.A/7 letter dated 15.02.2004, Ex.A/8 letter from Assistant Manager to District Manager dated 19.02.2004, Ex.A/9 letter dated 05.03.2004 and Ex.A/10 report of Internal Audit & Physical Verification Branch of the Corporation.

The trial Court on appreciation of evidence has come to the conclusion that the plaintiff firm is entitled to receive a sum of Rs.8,67,970 from the defendants and has decreed the suit filed by plaintiff for Rs.8,67,970 with interest @9% from the date of filing of the suit til realization. Hence, the present appeal by defendants.

Heard learned counsel for the parties and peursed the material available on record.

It has been contended by the learned counsel for the appellant that the findings recorded by the trial Court on issues framed by it is contrary to law and the evidence brought

on record has not been properly appreciated in the case. It has also been contended that the trial Court has failed to understand that there was no agreed guarantee occupation period in the agreement Ex.3, therefore, the trial Court was required to consider the matter only to the extent of actual occupancy of the lease. According to the learned counsel, the trial Court has failed to correctly interpret Clause I & III of Ex.3 i.e. lease agreement for hiring the godown premises.

On the other hand, it has been contended that the trial Court has correctly interpreted the terms of lease agreement and rightly decreed the suit. It has also been contended that on defendant-appellants assurance and asking the plinths/godowns were constructed by the plaintiff and huge amount to the tune of more than Rs.20 lacs was spent and the same was supervised/inspected by the officers (Assistant Engineers) of defendant-appellants and when it was found that 8 godowns constructed were absolutely as per the norms then the lease agreement was executed making a

mention therein that for an initial period of two years the defendant shall hire the plaintiff's premises. According to the learned counsel, the defendants subsequently cannot back out from the agreement and say that since they have vacated the other godowns before two years, in law they are not under any obligation to make payment of the occupancy guarantee period.

I have considered the submissions made before me.

The points which require consideration in the present case are: (1) As to whether the plaintiff is entitled to receive rent of 8 plinths for a period of two years as it was agreed between the parties and an agreement was also executed to the effect that occupancy guaranteee was for the period from 14.04.2002 to 13.04.2004 i.e. to say for a period of two years?, (2) Whether the trial Court has correctly recorded its finding on Issue No.1 & 2, and (3) Whether any interference is called for in the judgment and decree dated

28.09.2005 passed by Addl. District Judge, Anoopgarh in Civil Original Suit No. 41/2004 – Firm Tekchand & Ors. Vs. FCI & Ors?

Point No.1 & 2:

Points No.1 & 2 are inter-linked, as such, the same are being disposed off together.

It is to be seen that it is a pure and simple case where the entire matter depends upon interpretation of Clause I & II of Ex.3 i.e. the Lease Deed executed between the parties. This document has not been denied and is an admitted document. The case of the plaintiff is that on the basis of assurance and asking by the defendants, the plaintiffs got constructed 8 godowns for the purpose of giving them to defendant-appellants on lease as the Corporation made proposal in this behalf vide its letter dated 24.01.2001 to hire 8 godowns (plinths) with the guarantee to keep the godowns initially for a period of two years and negotiations also took place at Jaipur on 08.05.2001. The further case of the plaintiff

is that after making construction of the godowns the same were inspected by the District Manager of the Food Corporation of India, Sri Ganganagar and thereafter lease deed was executed and it was agreed that the rent of godowns would be @ Rs.49,788 per month. It is further case of the plaintiff that the defendants discontinued paying rent from 13.04.2004, as such a notice was also sent to them but without any result. The case of the defendants is that according to the terms and conditions of Ex.3 the plaintiff is entitled to receive rent only for the period of actual occupancy of the godowns with the Corporation. PW1 Tekchand & PW2 Prem Kumar have been examined by the plaintiff and they have proved the plaintiff to be a partnership firm and also proved the copy of the lease deed Ex.3 and other documents including notice etc. The above witnesses have stated that the suit premises were given on lease and occupancy guarantee was given by the defendant corporation for a period of two years and thereafter it was subject to renewal. The defendants' witness DW1 G.R. Meena, who has

been examined on affidavit, has admitted the execution of lease document and the correspondance which took place before the godowns were constructed. He has also proved Ex.9 a letter written by Deputy Manager (Stg.) for and on behalf of Senior Regional Manager to the District Manager, FCI, Sri Ganganagar wherein it has been stated that the occupancy guarantee would be for a period of two years which will commence from the date of possession of the plinths by the FCI on completion thereof. It is not necessary to discuss the other correspondance in this case as it has been discussed in detail by the learned trial Court. The curx of the matter is the interpretation of the terms and conditions of the lease agreement Ex.3. Clause I to III are relevant, which are being reproduced hereinbelow:

> "Clause I. The Lessors hereby agree to let out and the lessee hereby agrees to take on lease a godown as per details set out in the Schedule enclosed for an initial period of lease upto 13.04.2004 from 14.04.2002 and thereafter subject as herein after mentioned on a monthly tenancy the godowns/prmises described in the

> schedule hereto. It is agreed that the tenancy hereby created shall be terminable (subject to clause, III hereof) at the option of the lessee at any time by him giving the lessors one month's notice in writing.
>
> Clause II : The lessee shall during the currency of the tenancy, pay to the lessor for the actual period of occupation of godown a monthly rent @ 45 paise per sq.ft. Per month by the 10th of following month by way of account payee cheque.
>
> Clause III : The lessee will have the option to extend the lease for a further period of one year on the same rates, terms and conditions."

After carefully examining the above terms and conditions of Ex.3, it appears that this document, which is not registered one is the lease deed for a period of two years. No objection was taken when this document was put in evidence about its being unregistered. Be as it may, this document can be taken into consideration in relation to reaching to a conclusion as to whether any possession of the godown was handed over to the defendant on rent/lease. It appears from Clause I that this lease agreement was executed between the

parties intially for a period of two years because Clause makes a mention that lessors agreed to let out the lessee the premises, the details of which have been given in the schedule enclosed with the agreement for an initial period from 14.04.2004 to 13.04.2004. Thus, one thing is clear from the above words that initially the lease was to start from 14.04.2002 and it was to end on 13.04.2004. Further reading of this clause suggests that after the expiry of the period of two years this lease document shall be subject to the condition stated in clause III at the option of the lessee that the lease shall be terminable at any time by giving to the lessor one months notice in writing. Clause III makes a mention that lessee shall have an option to extend the lease for a further period of one year on the same terms and conditions. Thus, in my humble opinion, there is no hesitation in reaching to the conclusion that occupancy guarantee period was two years and this was to start from 14.04.2002 and to end on 13.04.2004. It is also significant to mention here that in Ex.9 the correspondence which is of defendants, in

that letter dated 29th May, 2001 clearly made a mention as under:

> "The occupancy guarantee is for 2 (two) years, which will commence w.e.f. dated of takenover of possession of the plinths by the FCI, on completion of construction thereof with services within the stipulated period. The FCI shall also have an option to extend the lease for a further period of one year on the same rate, terms and conditions as laid down in the agreement".

This Ex.9 is an admitted document. Thus, it appears from the material available on record and by reading of the lease agreement (Ex.3) and also by carefully going through the pleadings of the parties that the defendant asked the plaintiff to make construction of 8 godowns as per their requirements. The amount in relation to construction of the godowns spent by the plaintiff was on the assurance of occupancy period promised by the defendants. The plaintiff invested money on the assurance given by the defendants and the construction work was done under supervision/satisfaction and inspection made by the defendant's authorities of the godowns and after their

approval lease was executed as is clear from Ex.9. If the defendants assured the occupancy guarantee to take on lease the godowns and the plaintiff on the assurance acted, spent money and constructing godowns handed over the same to the defendants, then the defendants on one fine morning could not say that they will pay the rent of the leased property only upto the period they had occupied the same. The minimum occupancy period agreed between the parties appears to be two years. By no stretch of imagination, by reading Clause II of Ex.3 it can be said that the defendants were at liberty to terminate the lease before the expiry of two years at any time after giving one month's notice. Be that as it may, the bare reading of Clause I of Ex.3 which says that initial period of occupancy would be of two years and thereafter it shall be subject to the terms stated in Clause III of Ex.3, then Clause III becomes relevant to decide the controversy and Clause III states that the lease may be extended for a further period of one year on the same terms and conditions as agreed by the parties initially i.e. for a period of two

years. The trial Court has discussed the matter in detail and reached to the conclusion that plaintiff has proved its case on the basis of lease agreement and the correspondence which took place between the plaintiff and defendant-appellants particularly Ex.9, 10 & 11, the documents, wherein in clear and categorical manner it has been admitted that the occupancy guarantee period of leased premises was two years. The learned trial Court in Para 20 to 23 has recorded its finding on Issue No.1 which reads as under:

> " 20- चूंकि प्रश्नगत लीज एग्रीमेंट में लीज की अवधि दो वर्ष होना अंकित किया गया हैं तथा लीज एग्रीमेंट प्रदर्श 3 पंजीकृत नहीं हैं जो आवश्यक रूप से पंजीयन योग्य हैं लेकिन उपरोक्त विवेचन के अनुसार माननीय सर्वोच्च न्यायालय, दिल्ली उच्च न्यायालय एवं मैसूर उच्च न्यायालय द्वारा दी गई व्यवस्थाओं के प्रकाश में लीज एग्रीमेंट प्रदर्श 3 को कब्जे की प्रकृति व चरित्र के निर्धारण हेतु कोलेटरल परपज से देखा जा सकता हैं।
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> 21- प्रदर्श 9 पत्र दिनांकित 29.5.01 प्रतिवादीगण का स्वीकृत दस्तावेज हैं जिसमें प्रतिवादी निगम के जयपुर स्थित रीजनल कार्यालय में उनके जिला प्रबंधक को 2 वर्ष की औक्यूपेंसी गारंटी पर प्रतिवादी निगम को किराए पर देने हेतु प्लिंथस का निर्माण कराए जाने हेतु लिखा गया हैं। प्रदर्श 9 में यह भी लिखा गया हैं कि निर्माण कार्य साईट का लेवल उचित तरीके से मार्गदर्शन के अनुसार ऊंचा करवाया जाकर तथा ले आऊट प्लान को इंजीनियरिंग

ब्रांच से अनुमोदित कराया जावे। औक्यूपेंसी गारंटी 2 वर्ष के लिए हैं जो प्लिंथस के निर्माण होने पर निगम द्वारा कब्जा लिए जाने की तारीख से प्रारम्भ होगी। निर्माण कार्य की प्रगति के दौरान निगम के अधिकारी/ अभियंता शाखा निर्माण कार्य का निरीक्षण करेगी तथा उनके द्वारा पूर्णता प्रमाण पत्र दिए जाने पर ही प्लिंथस टेक ओवर किए जाऐगें। निर्माण कार्य 4 माह में पूरा होने पर ही टेक ओवर किए जाएगें तथा व्यतिक्रम होने पर निगम प्लिंथस को किराए पर लेने हेतु बाध्यकारी नहीं होगी। इस पत्र की प्रति प्रतिवादी निगम द्वारा वादी फर्म को दी जाकर निर्देश दिए गए कि जिला प्रबंधक से तत्काल सम्पर्क कर आवश्यक अग्रिम कार्यवाही हेतु आवश्यक औपचारिकताएं पूरी करें।

22- प्रतिवादी निगम द्वारा वादी फर्म को दिनांक 29.6.01 को लिखा गया पत्र प्रदर्श 10 भी प्रतिवादीगण का स्वीकृत दस्तावेज है जिसमें भी प्रतिवादीगण ने वादी को 2 वर्ष की औक्यूपेंसी गारंटी पर प्रतिवादी निगम को किराए पर देने हेतु अनूपगढ़ में प्लिंथस का निर्माण कराए जाने हेतु लिखा गया हैं। प्रदर्श 9, 10 व 11 में प्लिंथस 2 वर्ष की औक्यूपेंसी गारंटी पर किराए पर लिए जाने का उल्लेख हैं। यह स्वीकृत स्थिति हैं कि प्रतिवादी निगम द्वारा वादी फर्म को 8 प्लिंथस का निर्माण किए जाने का आदेश दिए जाने के उपरान्त ही वादी फर्म ने प्रतिवादी निगम के अधिकारी/ अभियंता की देखरेख में 8 प्लिंथस का निर्माण करवाया तथा दिनांक 14.4.02 को प्रतिवादी निगम के अधिकारी ने वादी द्वारा निर्मित 8 प्लिंथस का कब्जा प्राप्त किया।

23- लीज एग्रीमेंट प्रदर्श 3 प्रतिवादी निगम का स्वीकृत दस्तावेज हैं क्योंकि प्रदर्श 3 के निष्पादन को प्रतिवादीगण ने भी स्वीकार किया हैं तथा प्रतिवादीगण ने भी इसी लीज एग्रीमेंट की फोटो प्रति न्यायालय की पत्रावली में प्रस्तुत की हैं तथा अपने वादोत्तर में भी उक्त लीज एग्रीमेंट निष्पादित किया जाना स्वीकार किया हैं।"

After carefully examining the matter, I am of the opinion that the trial Court has committed no illegality or irregularity in the appreciation of evidence or in interpreting the terms and conditions of document Ex.3. Simultaneously, I do not find any substance in the argument of learned counsel for appellants that the trial Court has not properly considered the terms and condition of agreement and misunderstood while interpreting the same. Thus, my answer to point No.1 & 2 framed is that the plaintiff is entitled to receive rent of 8 plinths as it was agreed between the parties by executing an agreement giving occupancy guarantee to the plaintiff for a period of two years from 14.04.2002 to 13.04.2004 and the trial Court has correctly recorded its finding on Issue No.1 & 2.

Point No.3:

In view of my answer to point No.1 & 2 the irresistible conclusion and answer to point No.3 is that no interference is required to be made in the impugned judgment and decree dated 28.09.2005 passed by learned Addl. District

Judge, Anoopgarh in Civil Original Suit No. 41/2004 filed by respondent-plaintiff firm Tekchand & Ors.

In the result, the appeal is dismissed. No orders as to costs.

(SATYA PRAKASH PATHAK)J.

/jpa